

Remarks

Claims 13, 15, 20, 21, 23-25, 27-30 and 43-58 were pending in the subject application. Applicant gratefully acknowledges the Examiner's withdrawal of the rejection of claims under 35 USC §102(b) as anticipated by Lin *et al.* (1998) and Seidman *et al.* (1984). By this Amendment, claims 13 and 28-30 have been amended and claims 15, 44, 46, and 47 have been cancelled. Support for the amendments can be found throughout the subject specification and in the dependent claims as currently pending. No new search or examination should be required on the part of the Examiner in considering the amended claims. Entry and consideration of the amendments presented herein is respectfully requested. Accordingly, claims 13, 20, 21, 23-25, 27-30, 43, 45, and 48-58 are currently before the Examiner for consideration. Favorable consideration of the pending claims is respectfully requested.

The Abstract of the Disclosure has been objected to for improper format. Specifically, the Examiner asserts that the Abstract does not commence on a separate sheet. Applicant respectfully submits that the Abstract of the Disclosure was submitted on a separate sheet (as page 39 of the specification) with the Preliminary Amendment dated October 4, 2005. Applicant has confirmed that the Abstract of the Disclosure is in the image file wrapper (IFW) on the U.S. Patent Office's Patent Application Information Retrieval (PAIR) system. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

The specification has been objected to on the grounds that new matter was added to the disclosure in regard to the sequences by Applicant's Amendment dated January 7, 2008. In addition, claims 13, 15, 20, 23, 25, 27-30, and 43-58 are rejected under 35 USC §112, first paragraph, as lacking sufficient written description on the grounds that the specification fails to describe the newly submitted SEQ ID NO:5 as now claimed. Applicant respectfully asserts that the Amendment dated January 7, 2008 did not introduce new matter into the subject specification and that there is written description for the claimed subject matter. Applicant acknowledges that SEQ ID NO:5 in the sequence listing as originally filed did show a sequence of 28 amino acids; however, the specification at page 7, lines 7-8, clearly teaches that SEQ ID NO:5 is a 29 amino acid sequence and sets forth the sequence thereof. Applicant's Amendment dated January 7, 2008 merely corrected the

sequence of SEQ ID NO:5 in the sequence listing. The specification defines SEQ ID NO:5 as having the 29 amino acid sequence shown at page 7, lines 7-8, and the Examiner acknowledges that the specification at page 7, lines 7-8, teaches the 29 amino acid sequence that Applicant identifies as SEQ ID NO:5 in the “Brief Description of the Sequences” section. Thus, there is support in the specification for the 29 amino acid sequence as SEQ ID NO:5 in the sequence listing and, thus, the Amendment dated January 7, 2008 did not introduce new matter into the application. Applicant notes that there is no Patent Office rule that prohibits an applicant from correcting the sequence of a SEQ ID NO. in a sequence listing as long as there is support in the specification for the correction (as noted above, the Examiner has acknowledged that there is support for the 29 amino acid sequence). The above also holds true for SEQ ID NO:18. To require Applicant to amend all of the places in the specification and claims that currently refer to SEQ ID NO:5 with a new SEQ ID NO. for the 29 amino acid sequence seems unnecessary and an inefficient use of Applicant’s and the Examiner’s time and does not appear to be required by the Patent Office’s rules. Accordingly, reconsideration and withdrawal of the objection to the specification and withdrawal of the rejection of the claims under 35 USC §112, first paragraph, is respectfully requested.

Claims 13, 28, 29, 30 and 43 are rejected under 35 USC §102(b) as anticipated by Shimkets (U.S. Patent No. 6,013,630). In addition, claims 1 and 27 are rejected under 35 USC §103(a) as obvious over Shimkets (U.S. Patent No. 6,013,630) in view of Schipper *et al.* (1996) (Applicant notes that the Office Action refers to this publication by the author’s first name, *i.e.*, Nicolaas *et al.* Applicant also notes that canceled claim 1 was included under this rejection; Applicant assumes, for purposes of this response, that the Examiner intended claim 13). The Examiner asserts that the Shimkets patent teaches a pharmaceutical composition comprising a nucleic acid sequence encoding a natriuretic hormone peptide comprising a glycine at the amino terminus position of the peptide (SEQ ID NO:1). The Examiner also asserts that Shimkets teaches a nucleic acid (*e.g.*, SEQ ID NO:3) encoding the peptide, and vectors and host cells comprising the nucleic acid, as well as vectors that could be used as a therapeutic agent in a pharmaceutical carrier in gene therapy and delivered via liposome. Applicant respectfully traverses these rejections.

Applicant respectfully asserts that the cited references, taken alone or in combination, do not teach or suggest Applicant’s claimed invention. However, by this Amendment, Applicant has

amended independent claims 13, 28, 29, and 30 to incorporate the element of dependent claims 15, 44, 46, and 47, *i.e.*, that the peptide comprises SEQ ID NO:5 (Applicant notes that claim 43 depends from claim 13). Applicant respectfully asserts that the Shimkets patent not teach or suggest the amino acid sequence of SEQ ID NO:5. The Examiner acknowledges the same as claims 15, 44, 46, and 47 are not included under either rejection. Thus, the rejections of claims 13, 27, 28, 29, 30, and 43 have been rendered moot by the amendments presented herein. Accordingly, reconsideration and withdrawal of the rejections under 35 USC §102(b) and 35 USC §103(a) is respectfully requested.

It should be understood that the amendments presented herein have been made solely to expedite prosecution of the subject application to completion and should not be construed as an indication of Applicant's agreement with or acquiescence in the Examiner's position.

In view of the foregoing remarks and amendments to the claims, Applicant believes that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account 19-0065.

Applicant invites the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



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Attachment: Petition and Fee for Extension of Time